



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-160
Regulation title	Voluntary Remediation Regulations
Action title	Proposed Amendment 2 - Voluntary Remediation Regulations
Date this document prepared	January 31, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Voluntary Remediation Regulations, 9VAC20-160, establish standards and procedures pertaining to the eligibility, enrollment, reporting, remediation, and termination criteria for the Voluntary Remediation Program (VRP). This program is designed to encourage voluntary hazardous substance cleanups that might not otherwise take place and to protect human health and the environment with minimum expense and delay of the remediation process. Amendment 2 is intended to revise program procedures so that sites can be processed more efficiently.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal basis for the Voluntary Remediation Regulations, 9VAC20-160 is the Brownfield Restoration and Land Renewal Act. Specifically §10.1-1230 of the Code of Virginia authorizes the Waste Management Board (Board) to promulgate regulations that facilitate voluntary cleanup of contaminated

sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. There is no corresponding federal mandate, since the regulations apply only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The agency performed an internal review of the Voluntary Remediation Regulations and determined that there is a continued need for this regulation. Since 1996 more than 300 applications have been submitted to the Voluntary Remediation Program (VRP). Certificates of completion have been issued to over 145 participants and the current active case load exceeds 150 sites. Without this program there is a likelihood that many of these cleanups may not have occurred.

The regulation is not considered complex.

Virginia Code section 10.1-1230 of the Brownfield Restoration and Land Renewal Act requires the Waste Management Board to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

This regulation was amended in 2002 and the final regulation became effective July 1, 2002. Based on the internal review, the agency has determined that amendment of the regulations is needed to improve reporting requirements; update current sampling and analysis methods due to updated technology; and clarify eligibility, termination, and application requirements.

This regulation has no negative economic impact on small businesses. The VRP provides the opportunity for reasonable cleanup goals and protects human health and the environment. These cleanups facilitate the sale and reuse of industrial and commercial properties, provide economic benefits for the buyer and seller, and reduce green space development. Communities benefit when these projects are completed. The cleanup of a site may impact surrounding properties by increasing property values, tax revenues, employment opportunities and community pride. The citizens, businesses, and local governments of the Commonwealth all derive benefits from the VRP.

Amendment 2 is intended to revise the program procedures so that sites can be processed more efficiently and reflect changes in technology.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The amendment of the regulations may include but will not be limited to reviewing the following:

- Definitions.
- Applicants and candidate sites eligible to participate in the program.
- The application process and timely processing of applications.
- Work to be performed by accepted sites to ensure that cleanups progress in a timely manner.
- Remediation requirements, land use controls, ground water remediation levels, and ecological risk assessments.
- Current sampling and analysis methodologies and alternative technologies.
- Submittal of the registration fee, termination from the program, requirements for filing the certificate and deed restrictions, and revocation of the certificate.
- Public notice requirements.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

One alternative is to make no changes to the regulations. The current regulations are effective and the VRP would continue to achieve its purpose of encouraging voluntary cleanups. However, changes have been identified by the department that would improve the program without increasing the expense or delay of the remediation process. During the participatory process, other alternatives could be identified. The advisory committee will consider these alternatives and incorporate them into the amendment if appropriate.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public meeting by mail, email or fax to Virginia A. Butler, Department of Environmental Quality, Post Office Box 1105, Richmond, Virginia 23218, (804) 698-4053, fax (804) 698-4327, vabutler@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the contact person by the end of the comment period and provide their name, address, phone number, email address and the organization represented (if any). Any persons who want to be on the technical advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the technical advisory committee is to develop recommended regulation amendments for Board consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the technical advisory committee will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There will be no direct impact on the institution of the family. The regulations encourage hazardous substance cleanups and enhance the public health, safety, and welfare of the citizens residing in the vicinity of a contaminated property. Families may benefit indirectly from the remediation of properties in their communities.